

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE BELGIAN-LUXEMBOURG ECONOMIC UNION ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Kingdom of Belgium, on behalf of the Government of the Grand Duchy of Luxembourg based on the Convention pertinent to the creation of the Belgian Luxembourg Economic Union, and in its own name.

Desiring to develop economic cooperation between the two Contracting Parties, especially to create favourable conditions for investment by nationals of one Contracting party in the territory of the other Contracting Party.

Recognising that the conclusion of an agreement on the encouragement and protection of such investments on the basis of equality and mutual benefit will stimulate the initiative of investors so as to contribute to the increase of prosperity in both States.

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. "Investors" means

In respect of the People's Republic of China:

- (1) "Nationals" means physical persons who possess nationality of China accordance with the Chinese legislation.
- (2) "Enterprises" means economic organizations established in accordance with Chinese law and having seats in the territory of China.

In respect of the Belgian-Luxembourg Economic Union:

- (1) "Nationals" means physical persons who are deemed as the citizens accordance with the legislation of Belgium or Luxembourg;
- (2) Juridical persons such as corporations, organizations, foundations and partnerships without the status of juridical persons of Belgium or Luxembourg which are established in accordance with the law of Belgium or Luxembourg and having seats in the territory of Belgium or Luxembourg.

2. "Investments" means every kind of asset or property used as investment or reinvestment, in particular, though not exclusively, includes:

- (1) Movable, or immovable property and any other property rights such as mortgages, liens, pledges, usufructs and other similar rights;
- (2) Shares, stock and interests of other forms;
- (3) Debentures, claims or claims to any performance having a financial value;
- (4) Copyrights, industrial property rights, technical process, registered trademarks, trade names and goodwill; or,
- (5) Concessions to search for, extract or exploit natural resources.

The above asset or property used as investment shall be in conformity with the laws of the Contracting Party accepting the investment.

Any change in the form in which assets or property are invested does not affect their character as "investments" defined in this Agreement.

Article 2.

1. Each Contracting Party shall accept in its territory investments of investors of the other Contracting Party in accordance with its laws and encourage such investments.

2. Each Contracting Party shall permit, in accordance with its laws and regulations, investors of the other Contracting Party to conclude and execute licensing contracts, business management contracts or technical assistant contracts.

Article 3.

1. Direct or indirect investment made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy equitable treatment.

2. Protection and equitable treatment shall be accorded as regards management, operation, use or liquidation of the above said investment unless necessary measures should be taken for the maintenance of public order and in defense of the State law.

3. The treatment and protection provided in paragraphs 1 and 2 of this Article shall not be less favourable than that enjoyed by investors of a third State. paragraphs 1 and 2 of this Article shall not be less favourable than that enjoyed by investors of a third State.

4. Notwithstanding the provisions of the above Paragraphs the treatment and protection mentioned in the above paragraphs shall oblige one Contracting Party to extend any preference resulting from the agreement on the establishment of customs union, free trade area or economic union or for facilitating frontier trade.

Article 4.

1. Neither Contracting Party shall in its territory take the measure of expropriation, nationalization or other similar measures on the investment of the investor of the other Contracting Party except for the necessity of security and public interest under the following conditions:

(1) Measures are taken pursuant to the domestic legal procedure;

(2) Measures are non-discriminatory if compared with the measures taken against the investment or investor of a third State;

(3) Rules on the payment of compensation are provided.

2. Afore-said compensation in section (3) of paragraph 1 of this Article shall be paid a convertible currency without undue delay to the investor, and be freely transferable. section (3) of paragraph 1 of this Article shall be paid a convertible currency without undue delay to the investor, and be freely transferable.

3. If one Contracting party expropriates, in its territory, the asset or property of an enterprise, of which an investor of the other Contracting Party possesses capital shares or participating interests of other forms, the former Contracting Party shall apply the provisions of Paragraphs 1 and 2 of this Article to such shares or the participating interests of other forms possessed by such investor of the latter Contracting Party.

Article 5.

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of property invested in the territory of the former Contracting Party especially:

(1) Returns including profits, interest, capital gains, dividends, royalties, other legitimate incomes and financial claims;

(2) Proceeds as compensation paid under Article 4;

(3) Proceeds resulting from the total or partial liquidation of an investment;

(4) Payment for a normal loan.

2. The above transfer of this Article shall be made without undue delay, but with the payment of routine tax and commissions.

Article 6.

1. The transfers mentioned in Articles 4 and 5 of this Agreement shall be made at the rate of exchange applicable on the date of transfer in the Contracting Party accepting the investment.

2. In any event applicable rate of exchange shall be equitable, including normal tax and commissions collected for exchange formalities.

Article 7.

If one Contracting Party or its public Agency makes a payment to its investor under an indemnity granted in respect of an investment the other Contracting Party or its public Agency of all the rights of the investor indemnified.

The Contracting Party or its public Agency shall be entitled to execute in the name of the investor and within the scope of the assigned the rights and related claims of such investor by virtue of subrogation.

The other Contracting Party may make counter-claims, origination in the investor on the former Contracting Party to the assigned rights.

Article 8.

This Agreement shall not impair the enjoyment by investors of a more favourable treatment provided in the laws and regulations of one Contracting Party where the investment is located or the international agreements in which both Contracting Parties participate.

Article 9.

Investors of either Contracting Party may make investments under special contracts.

Each Contracting Party shall observe any obligation it may have entered into with investors of the other Contracting Party.

The above special contracts or obligations shall be in conformity with the laws of the Contracting Party accepting the investment and the provisions of this Agreement.

Article 10.

1. Any dispute arising from an investment shall be notified in writing by the investor of one Contracting Party to the other Contracting Party with a detailed memorandum attached.

The dispute shall be, as far as possible, amicably settled under the condition of respect for the laws and regulations of the Contracting Party accepting such investment.

2. The dispute mentioned in paragraph 1 of this Article above shall be subject to jurisdiction of the State where the investment is located.

3. As an exception of Paragraph 2 above a dispute which arises from an amount of compensation for expropriation, nationalization or other similar measures and has not been settled within six months from date of notification may, as the investor prefers referred for settlement either to:

(1) A judicial body of the Contracting Party accepting the investment, or,

(2) An international arbitration without resort to any other means.

Article 11.

Investors of one Contracting Party shall enjoy the most favoured nation treatment in the territory in the of the other Contracting Party in respect of all the matters subject to this Agreement.

Article 12.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through the diplomatic channel.

If a dispute cannot thus be settled it shall be submitted to the joint committee consisting of representatives of both Contracting Parties. Such committee shall convene a meeting without undue delay at the earlier request of the Contracting Party.

2. If a dispute cannot thus be settled by the joint committee within six months of a written notification to one Contracting Party it shall upon the request of either Contracting Party be submitted to an ad hoc arbitral tribunal.

3. Such arbitral tribunal shall consist of three members. Within two months of a written notification of request for arbitration, each Contracting Party shall appoint one member, and these two members shall within two months after their appointments, select a national of a third State which has diplomatic relations with two Contracting Parties as third member of tribunal. Such member shall be appointed Chairman of the tribunal by the two Contracting Parties.

4. If within four months of the written notification of the request for arbitration, the ad hoc tribunal has not been constituted either Contracting Party may, in the absence of any other arrangement between the two Contracting Parties, invite the President is national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-president shall be invited to make the necessary appointments.

If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedure and reach its decision in accordance with the provisions of this Agreement, international agreements in which both Contracting Parties have participated dealing with such matters, and generally recognized principle of international law.

The tribunal shall make its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal shall interpret its decision at the request of either Contracting Party.

6. Each Contracting Party shall bear the cost of its appointed members of the tribunal. The advanced payment of the Chairman and the remaining costs in the arbitral proceedings shall be borne in equal parts by both Contracting Parties.

Article 13.

This Agreement shall also apply to investments made by investors of China in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg in accordance with the laws and regulations in force of the Kingdom of Belgium or the Grand Duchy of Luxembourg, as well as to investments made by investors of Belgium or Luxembourg in the territory of the People's Republic of China in accordance with the laws and regulations in force of the People's Republic of China.

Article 14.

1. This Agreement shall come into force on the thirtieth day from the date on which the Contracting Parties have informed each other of the fulfillment of the internal legal procedures and remain in force for a period of ten years.

2. The Agreement shall continue to be in force indefinitely in the absence of a written notification for the termination of this Agreement by either Contracting Party to the Other one year before its expiration as provided in Paragraph 1 of this Article.

3. After the expiry of the first ten-year period, this Agreement may be terminated by either Contracting Party after one year's written notice at least has been given to the other Contracting Party.

4. The provisions of this Agreement shall continue in effect for a period of ten year after the date of termination with respect to investments made whilst the Agreement is in force.

Done in duplicate at Brussels on 4th June, 1984, in the Chinese, French and Dutch languages, both texts being equally authoritative.

(Zhang Jinfu) For the Government of the People's Republic of China

(De Clercq) For the Belgian-Luxembourg Economic Union